No. 12,320

IN THE

United States Court of Appeals

For the Ninth Circuit

JAMES G. SMYTH, Collector of Internal Revenue, for the First District of California,

Appellant,

vs.

MURIEL E. BARNESON, also known as Muriel Elfrida Barneson, an Incompetent Person, by Lionel T. Barneson, Guardian,

Appellee.

On Appeal from the United States District Court for the Northern District of California.

BRIEF FOR APPELLANT.

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OPINION BELOW.

The District Court entered no opinion below. The findings of fact and conclusions of law of the District Court (R. 74-78) are not officially reported.

JURISDICTION.

This appeal involves federal income taxes and interest in the amount of $84,242.49 for the calendar year 1941. (R. 49.) These taxes and interest were paid June 28, 1945, and October 18, 1945. (R. 48, 75-76.) Within the time and in the manner provided by law a claim for refund was filed. (R. 48-49, 76.) More than six months after the filing of the claim and within the time provided by Section 3772 of the Internal Revenue Code or on February 25, 1948, the taxpayer brought an action in the District Court for recovery of the taxes paid. (R. 22.) Jurisdiction was conferred on the District Court by 28 U.S.C., Section 1340. The judgment was entered on March 25, 1949. (R. 79-80.) Within sixty days and on May 19, 1949, a notice of appeal was filed (R. 88-89), pursuant to the provisions of 28 U.S.C., Section 1291.

QUESTION PRESENTED.

Whether the District Court correctly allowed taxpayer a deduction in the calendar year 1941 for a worthless debt under the provisions of Section 23 (k)(1) of the Internal Revenue Code.

STATUTE INVOLVED.

Internal Revenue Code:

> SEC. 23 [as amended by Sec. 113, Revenue Act of 1943, c. 63, 58 Stat. 21]. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * * * *

(k) *Bad Debts.*—

(1) *General Rule.*—Debts which become worthless within the taxable year; or (in the discretion of the Commissioner) a reasonable addition to a reserve for bad debts; and when satisfied that a debt is recoverable only in part, the Commissioner may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction. This paragraph shall not apply in the case of a taxpayer, other than a bank, as defined in section 104, with respect to a debt evidenced by a security as defined in paragraph (3) of this subsection.

* * * * * * *

(26 U.S.C. 1946 ed., Sec. 23.)

STATEMENT.

The facts material to the issue presented here as taken from the stipulation of the parties (R. 26-50) adopted by the Court below (R. 74), the findings of fact of the Court below (R. 74-77) and the exhibits attached to the stipulation of the parties (R. 50)[1] are as follows:

Taxpayer is the daughter of John Barneson, who died February 25, 1941. John Barneson had three

[1]Although the exhibits accompanying the stipulation of the parties were designated as part of the record on appeal (R. 154, 156), they have not been printed as part of the record. Therefore, no record reference can be made when referring to exhibits; rather reference to the exhibit itself will be made. It is assumed the exhibits will be physically before this Court on argument.

other children, J. Leslie Barneson and Lionel T. Barneson, who are still living and Harold J. Barneson, who died February 7, 1945. (R. 26.) Taxpayer was legally adjudged incompetent on April 3, 1936 (R. 74), and her brother, Lionel T. Barneson, has at all times since that date been the guardian of her person and estate. (R. 26, 74.)

Between July 1, 1927, and February 20, 1932, Harold J. Barneson engaged in the stock and bond brokerage business as a partner in various stock and bond brokerage partnerships. (R. 27-28.) From time to time in the conduct of his stock brokerage business Harold J. Barneson needed additional working capital and after exhausting his personal credit, he turned to his father, John Barneson, for aid. This aid John supplied by investing in the particular stock and bond brokerage business of which Harold was, at the time of his investments, a partner. In this manner John advanced Harold $300,000 in 1928 and $125,000 in 1929. Of this total sum of $425,000 John received $150,000 from taxpayer and $150,000 from his wife, Harriet. The remaining $125,000 he supplied himself. (R. 28-30.)

Taxpayer transferred this $150,000 to John by check. On April 3, 1928, she wrote her check No. 443 to the order of John Barneson in the amount of $25,000. (R. 31-32.) This check stub bore the notation "Special partnership". (Ex. C.) On May 8, 1928, taxpayer wrote her check No. 444 to the order of John Barneson for $105,000. (R. 32.) This check stub bore the notation "Special partnership—$75,-

000.00 Loan—$30,000.00" and the further notation "Returned Loan May 23rd". (Ex. D.) On May 14, 1929, taxpayer wrote her check No. 378 in the amount of $50,000 to the order of John Barneson. Written in light pencil in the handwriting of the taxpayer on the stub of this check (which bears No. 337) are the words "I think HJB Partnership". (R. 33.)

John Barneson kept double entry books of account in which he kept two accounts with taxpayer, one entitled "Muriel E. Barneson a/c" and another and different account entitled "Muriel E. Barneson". The "Muriel E. Barneson Loan a/c" had only two entries, both credits, namely, May 8, 1928, a journal entry in the amount of $100,000; and May 15, 1929, cash in the amount of $50,000. The "Muriel E. Barneson" account contains numerous debits and credits. (R. 31.) The alleged debt from John Barneson to taxpayer was never evidenced by a promissory note, nor was it ever acknowledged in writing by John Barneson except by his books of account. (R. 43.)

At various times from 1928 to 1932, John received returns or income from the moneys he had invested in the partnerships of which Harold Barneson was a partner. (R. 34, 35, 38, 41.) In 1928, John received a return of $33,295.06 of which he paid taxpayer $11,098.35. (R. 34.) Taxpayer reported this in her 1928 income tax return as "4. Income from Partnerships" and gave as the source of the income "H. J. Barneson & Co., San Francisco". (R. 34-35.) In 1929, John Barneson received a return of $44,162.88 of which he transferred to taxpayer $14,720.96. Taxpayer reported

this income in her 1929 income tax return as "5. Income from Partnerships" and gave as the source "H. J. Barneson & Co., San Francisco". (R. 35.) Taxpayer was never named as a partner, general or limited, in any of the stock brokerage partnerships of which her brother Harold, was a partner. (R. 35.) However, John Barneson was named as a limited partner in two of the partnerships. (R. 36.)

John Barneson received no return or income from the moneys he had invested in the stock and bond brokerage partnership of which Harold J. Barneson was a partner during 1930, and he made no payments to taxpayer during that year. (R. 36.) However, in 1931, John received a net return of $12,000 of which he paid taxpayer $4,363.80. In her income tax return for 1931 taxpayer reported this income as "1 Salaries, Wages, Commissions, etc." and gave as the source "Walsh, O'Connor & Barneson". Taxpayer was never an employee of Walsh, O'Connor & Barneson, however. (R. 38-40.) In 1932, John Barneson received a return of $1,100 of which he transferred to taxpayer $400. Taxpayer reported this income as "Interest on Bank Deposits, Notes, Corporation Bonds, etc." (R. 41.) No payments of interest or other payments were ever made to taxpayer by John Barneson except from the returns he received on the moneys invested with Harold J. Barneson. (R. 43.)

In 1932, Walsh, O'Connor & Barneson, Harold J. Barneson's last stock and bond brokerage venture, failed financially, and in his 1932 income tax return, filed jointly with his wife, Harriet, John Barneson

claimed as a loss the $425,000 invested in this partnership in his name. In addition this tax return showed other losses of $374,669.41. John's tax liability for the calendar year 1932 was zero. (R. 41-42.) However, taxpayer claimed no income tax deduction in her return for 1943 with respect to the $150,000 she had transferred to John in 1928 and 1929, although she had a tax liability for that year of $11,340.38. No part of the $150,000 has ever been allowed taxpayer as a deduction by the Commissioner in any taxable year. (R. 42-43.)

Lionel T. Barneson, the guardian of taxpayer's person and estate since April 3, 1936, has never listed in any inventory of the assets of taxpayer's guardianship estate any obligation or debt owed taxpayer by John Barneson. (R. 45.)

John Barneson died February 25, 1941, and Lionel T. Barneson was named executor of his will. As guardian of taxpayer's person and estate, Lionel T. Barneson filed a "Creditor's Claim" for $150,000 against the estate of John Barneson, covering the items included in the "Muriel E. Barneson Loan a/c". This claim was disallowed on the ground that the statute of limitations had run. Taxpayer never brought suit on this claim at any time subsequent to its disallowance. (R. 44-45.)

John Barneson at all times possessed the requisite financial ability to have paid $150,000 to taxpayer on demand. (R. 45.)

In her 1941 federal income tax return taxpayer listed the $150,000 "Creditor's Claim" as a bad debt

deduction. (R. 45-46.) This deduction was disallowed by the Commissioner and a deficiency of $70,369.97 was assessed against taxpayer. (R. 47.) Taxpayer paid this deficiency together with interest thereon in the amount of $13,872.52. (R. 48.)

The District Court further made the following findings of fact (R. 74-77) which the Government contends are erroneous:

On January 1, 1941, John Barneson was indebted in the amount of $150,000 to taxpayer for cash loans in the aggregate sum of $150,000 made by taxpayer to John Barneson in 1928 and 1929, no part of which has ever been repaid. (R. 75.)

This debt became worthless within the taxable year 1941. (R. 77.)

STATEMENT OF POINTS TO BE URGED.

The Government relies upon two points in this appeal. It is our contention that no debt in fact ever existed for which taxpayer may claim a deduction and further, that if a debt did in fact exist, taxpayer is nevertheless not entitled to a worthless debt deduction because of her failure to prove that she made reasonable efforts to collect the debt.

SUMMARY OF ARGUMENT.

1. The finding of the District Court that John Barneson was indebted to taxpayer in the amount of

$150,000 is clearly erroneous. Before a taxpayer may take a deduction from gross income for a bad debt, the debt must be proved to have an existence in fact. It is the intention of the parties at the time of the transaction alleged to create the debt and not subsequent events which is controlling. In determining whether there was in fact, a loan, family transactions must be subjected to close scrutiny.

The facts in the present case indicate the transaction here under consideration to be an investment rather than a loan. Taxpayer's notations on the stubs of the checks by which she transferred the funds here sought to be deducted indicate that she did not intend the transfers to constitute loans. The nature and the character of the income derived by taxpayer from the transactions here in controversy are inconsistent with any view that the transfers were loans but rather partake of a return on an investment. Taxpayer has never received any note or other evidence of an obligation to repay from her father, John Barneson, for the funds transferred. The manner in which taxpayer reported the income derived from the funds transferred in her income tax returns is indicative of an investment and not a loan. Finally, although taxpayer's guardian stated he knew John Barneson to be indebted to taxpayer in the amount of $150,000, he never reported this obligation as an asset of taxpayer's guardianship estate.

2. Throughout the entire period of 12 years that the indebtedness of John Barneson to taxpayer was in existence before John Barneson's death, taxpayer

took absolutely no steps to obtain payment, never requested of John Barneson that he fulfill his obligation, nor ever sought to secure a note or other evidence of the debt. Because of her failure to take reasonable steps to collect the debt, taxpayer is not entitled to a deduction for a worthless debt.

ARGUMENT.

I.

NO DEBT IN FACT EXISTED BUT RATHER TAXPAYER'S ADVANCES WERE IN THE NATURE OF INVESTMENTS.

Admittedly the question presented here is essentially one of fact in which this Court is bound by the findings of the Court below unless they are shown to be clearly erroneous. The Supreme Court has said in *United States v. Gypsum Co.*, 333 U. S. 364, 395:

> A finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.

It is our contention that a review of the entire evidence cannot help but leave one with a definite and firm conviction that a mistake has been made.[2]

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[2]It should be noted in reviewing the evidence that this is not a case wherein the opportunity of the court below to observe the demeanor and conduct of witnesses on the stand and draw conclusions as to the credibility of their testimony is of great importance, for although taxpayer did produce one witness, Lionel T. Barneson, his testimony (R. 111-143) is of little significance. Rather the case was submitted on the stipulation of the parties (R. 26-50) and documentary evidence (see fn. 1, *supra*).

It is well settled that before a taxpayer may take a deduction from gross income for a bad debt, the debt must have had an existence in fact, and the taxpayer must carry the burden of proving the debt. *Allen-Bradley Co. v. Commissioner,* 112 F. (2d) 333, 335 (C. A. 7th). It is the intention or agreement of the parties at the time of the transaction alleged to create the debt and not subsequent acts or declarations which is controlling. *Grossman v. Commissioner,* 9 B.T.A. 643, 645; *Davidson v. Commissioner,* 26 B.T.A. 754, 755. As was said in the *Grossman* case, *supra* (p. 645):

> To establish the debt petitioner must show affirmatively that there was an agreement or intention of the parties, at the time of the transaction, that the money transferred was loaned. Proof of such intention or agreement must consist of acts or declarations substantially contemporaneous with the event. Subsequent acts or declarations can not change the nature of the transaction. * * *

Furthermore, transactions between family members are to be subjected to close scrutiny in determining whether or not there was in fact a loan. *Redfield v. Eaton,* 53 F. (2d) 693, 695 (Conn.); Cf. *Montgomery v. United States,* 23 F. Supp. 130 (C. Cls.), certiorari denied, 307 U. S. 632; *Hoyt v. Commissioner,* decided April 26, 1944 (1944 P-H T.C. Memorandum Decisions, par. 44,133).

The record is replete with facts clearly indicating that the transaction here entered into between taxpayer and her father, John Barneson, was not a loan.

Of singular importance are the notations made by taxpayer on her check stubs. These notations are indicative of taxpayer's understanding and intentions in the transactions here in question. Certainly they are the only concrete evidence contemporaneous with the transactions which indicate the intentions of the taxpayer herself.

The transactions here in question involve transfers from taxpayer to her father in the amount of $180,000. This amount was transferred by three checks in the amounts of $25,000, $105,000 and $50,000. The corresponding check stubs are respectively numbered 443, 444, and 337. Check stub No. 443 bears the notation "Special partnership" (Ex. C), and on check stub No. 337 in light pencil in the handwriting of taxpayer appear the words "I think HJB Partnership". (R. 33.) The notations on these check stubs are of minor significance until considered in the light of stub No. 444. On this stub the amount of the check, $105,000, was broken down and noted "Special partnership—$75,000.00" and "Loan—$30,000.00". (Ex. D.)[3] The only conceivable reason for taxpayer making this distinction on her check stub was that she did not consider or intend the $75,000 noted "Special partnership" to be a loan as she clearly did the $30,000. This view is strengthened when one considers that the

[3]The facts relative to the notations appearing on the check stubs here are to be compared with *Domestic Management Bureau, Inc. v. Commissioner,* 38 B.T.A. 640, wherein items of $5,000 and $2,000 shown as book entries under the headings of legal fees and miscellaneous expense, respectively, were disallowed, the Board observing that none of the entries indicated that there was anything receivable from the advances in question.

$30,000 was subsequently repaid by John Barneson, taxpayer's father. Furthermore, since taxpayer noted the other payments of $25,000 and $50,000 substantially the same as the $75,000, they must be deemed to have been treated by her as the same, i.e., not as loans. Rather it would seem that these payments were investments which taxpayer desired invested in the name of her father for reasons that we can only conjecture, but perhaps because she looked to him for the guidance and protection which every child seeks from a parent.

That the transactions here in question were in fact investments and not loans is borne out by other facts appearing in the record. A basic difference between a loan and a speculative investment is that the income derived from a loan, if indeed any is derived at all, is usually of a fixed and definite amount, while a speculative investment yields a variable return or income, depending upon the success or failure of the business invested in. Taxpayer's returns or income on the funds transferred to her father, John Barneson, partake more of the nature of a speculative investment. Admittedly John Barneson used the funds derived from taxpayer to invest in various stock brokerage ventures engaged in by his son, H. J. Barneson. John Barneson received a return on his investment which varied with the relative success or failure of his son's stock brokerage ventures. Taxpayer always shared in the returns on investment received by her father in proportion to the ratio her $150,000 bore to the entire amount her father had invested in his name. In the years in

which taxpayer's father's investment yielded no income, as in 1930, taxpayer received no payments from her father, and subsequent to the complete failure and liquidation of Walsh, O'Connor & Barneson, the last of John Barneson's stock brokerage ventures, and up to the date of John Barneson's death, taxpayer received no income from her $150,000. If it be contended that the payments made taxpayer by John Barneson in 1928, 1929, 1931 and 1932 were in the nature of interest payments and not returns on investment, then why did not John Barneson continue these payments subsequent to the failure of Walsh, O'Connor & Barneson? Admittedly John Barneson continued to receive income from the $150,000, for Lionel T. Barneson assigns this as his reason for wishing to defer the repayment of the sum to taxpayer. (R. 120.) Clearly then, if the nature and character of income have any bearing whatsoever on a determination of whether a transaction be a loan or an investment, it must be concluded that the transactions here in question were investments. Cf. *Cavanaugh v. Commissioner,* 42 B.T.A. 1037, affirmed by this Court, 125 F. (2d) 366 (an advance of $3,500 was deemed an investment because taxpayer's return on the advance was a share of profits).

Further there is lacking in the transactions between taxpayer and her father any note or other evidence indicating an obligation on the part of John Barneson to repay. It is not contended that there must be some written evidence of obligation to repay in order to create a valid and binding debt which is deductible

in the year it becomes worthless under the provisions of Section 23 (k) (1) of the Internal Revenue Code, *supra.* It is contended, however, that the absence of any note or other evidence of an obligation to repay is a factor to be considered in any determination of whether or not a valid debt in fact exists. Cf. *Thom v. Burnet,* 55 F. (2d) 1039 (C.A. D.C.).

Of interest and importance to the question presented here are taxpayer's tax returns for the years 1928, 1929, 1931 and 1932, being the years in which taxpayer received some payment from her father on account of the $150,000 transferred by taxpayer to him in 1928 and 1929. This income was reported during the years 1928, 1929, 1931 and 1932, respectively, under the headings of "Income from Partnerships", "Income from Partnerships" (R. 35), "Salaries, Wages, Commissions, etc." (R. 39) and "Interest on Bank Deposits, Notes, Corporation Bonds, etc." (R. 41.) In each instance the source of the income was given by taxpayer as the particular stock brokerage partnership in which her father at that time had invested her $150,000. At no time did taxpayer indicate her father John Barneson as the source of this income. Clearly this is indicative of the fact that taxpayer considered the transaction in question here to be an investment, not a loan. Her father was merely a conduit through which she received the return on her investment and through which her investment was originally made, nothing more. Taxpayer undeniably indicated this to be her understanding of her father's relationship to herself with regard to the transaction here in

question, when she completely ignored him and went directly to the source of the income from her investment in reporting it in her federal income tax returns. Had taxpayer felt the transfers of money to her father in 1928 and 1929 to constitute loans and the subsequent payments received from her father to be payments in the nature of interest, she would have so indicated by writing in his name on her tax returns as the source of the income from the transactions here in question.

Finally, some consideration should be given to the inventories filed in taxpayer's guardianship estate. These inventories were filed yearly by taxpayer's guardian, Lionel T. Barneson, and were required to include a list of all of taxpayer's assets. It will be remembered that it was Lionel T. Barneson who testified (R. 119, 121) that in April of 1936 his father, John Barneson, had stated to him that he owed taxpayer $150,000 which he intended to pay her. But at no time did Lionel T. Barneson list or mention in the inventories he filed as taxpayer's guardian any obligations of John Barneson to taxpayer. Certainly Lionel T. Barneson has taken a position in his testimony inconsistent with that taken in his inventories. The reason for these inconsistencies might be explained by considering that a tax refund of $82,242.49 hinges upon the final outcome of the present suit. Lionel T. Barneson should be made to stand by his position taken when he had no monetary motivation, which position indicates there was no debt or obligation owed taxpayer by John Barneson.

It is apparent from a consideration of the foregoing facts that John Barneson did not in fact have any obligation to repay taxpayer the $150,000 advanced by her in 1928 and 1929. A review of the evidence reveals the usual attributes of a loan to be lacking and many of the attributes of investments to be present. One cannot help but conclude that the decision of the District Court was clearly erroneous.

II.

TAXPAYER HAS FAILED TO SHOW ANY REASONABLE EFFORT TO COLLECT THE DEBT SUCH AS WILL ENTITLE HER TO DEDUCT IT AS WORTHLESS.

Assuming for the purposes of argument that a debt in fact arose out of the transactions here in question, taxpayer is nevertheless not entitled to a bad debt deduction under Section 23 (k) (1) of the Internal Revenue Code unless she has made a reasonable effort to collect the debt.

If in fact any debt existed, it came into being in 1928 and 1929, when taxpayer transferred the funds here sought to be deducted to her father, John Barneson. Subsequent to that time and up to the date of his death, John Barneson at all times possessed the requisite financial ability to repay the debt had taxpayer so requested. (R. 45.) But never did taxpayer or her legal representative request of John Barneson that he repay the debt, nor were any steps ever taken to protect taxpayer's interests by having John Barneson acknowledge the debt in writing or execute a note

or other evidence of obligation. In fact the only reference to the debt during the 12 years elapsing between 1929 and 1941 came from John Barneson, himself, voluntarily. According to the testimony of Lionel T. Barneson, John Barneson acknowledged shortly after Harriet Barneson's death that he owed taxpayer $150,000 and that he fully intended to pay her. As before stated, the testimony of Lionel T. Barneson on this point must be seriously questioned.

There was then a period of 12 years during which taxpayer took absolutely no steps toward collecting a debt of $150,000 owed her by her father, made absolutely no mention of the debt to her father at any time and did nothing to indicate that she felt a debt to be in fact in existence.

The close relationship of the parties alone is sufficient to raise the question of whether or not the debt was not in fact forgiven. *Gallagher v. Commissioner,* decided January 12, 1939 (1939 P-H B.T.A. Memorandum Decisions, par. 39,010). There can be no question but that had taxpayer chosen to ignore the family relationship, she could have collected the debt here sought to be deducted. Cf. *Gordon Corp. v. Commissioner,* 2 T.C. 571. That taxpayer may have been animated by pity, love or some kindred emotion in failing to press her father for payment of the debt is indeed commendable, but hardly entitles her to deduction of a worthless debt. *Block v. Commissioner,* decided June 7, 1943 (1943 P-H T.C. Memorandum Decisions, par. 43,267). See also *Thom v. Burnet,* 55 F.

(2d) 1039 (C.A. D.C.), wherein the Court said (p. 1040):

> But where the taxpayer, because of family ties or personal relations between himself and his debtor, is not willing to enforce payment of his debt, in whole or in part, he is not thereby entitled to deduct it from his income tax as worthless.

It is evident that in order to entitle himself to a deduction of a worthless debt, a taxpayer must not only prove that a debt in fact exists, but that he has taken all reasonable steps to collect the debt and exhausted all possibility of obtaining reimbursement. *Allen-Bradley Co. v. Commissioner,* 112 F. (2d) 333, 335 (C.A. 7th). In commenting upon the failure of a taxpayer to take reasonable steps to collect a debt, the Court said in *H. D. Lee Mercantile Co. v. Commissioner,* 79 F. (2d) 391, 393 (C.A. 10th):

> It is a startling proposition that a taxpayer may, for reasons of his own, decline to enforce a valid claim against a responsible concern and then assert that he has sustained a business loss which the government should share.

The case most nearly in point with the one presented here is that of *Bowser v. Commissioner,* decided July 29, 1948 (1948 P-H T.C. Memorandum Decisions, par. 48,137). In the *Bowser* case taxpayer had loaned his father $700 on February 24, 1923, and received his father's six per cent promissory note of even date payable February 24, 1924. The father paid nothing on the note and died in 1941. Taxpayer orally requested

payment of the executor of his father's estate but was refused on the ground that the note was outlawed. Taxpayer did not press his claim further. The Tax Court denied the deduction of the note as a worthless debt, observing that a failure to enforce payment of a collectible note will not support a deduction.

If anything, the *Bowser* case is stronger than the one presented here since it was a case wherein there was a definite debt in existence as evidenced by a promissory note. The facts with regard to the steps taken toward collecting the debt do not differ materially from those presented here, however. Admittedly, in the present case, taxpayer, through her legal representative, did file a written claim against the estate of John Barneson, while in the *Bowser* case taxpayer requested payment orally only. However, when viewed in the light of surrounding circumstances, the written claim filed by taxpayer must be deemed only a formality thought necessary to qualify the debt for deduction.

It is evident from the authorities cited above that taxpayer, by failing to take any action whatsoever toward collecting the debt from her father, a person well able to meet his financial obligations, has not proved that she made any reasonable effort to collect the debt and must, therefore, be denied the deduction here sought.

CONCLUSION.

The judgment of the lower Court should be reversed.

Dated, November 2, 1949.

Respectfully submitted,

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